



STATE OF INDIANA
VOLUNTARY REMEDIATION PROGRAM
COVENANT NOT TO SUE

COVENANT

On **DATE**, the Commissioner of the Indiana Department of Environmental Management issued a Certificate of Completion pursuant to Indiana Code § 13-25-5-16 to **APPLICANT** in recognition of the completion of the work required under a Voluntary Remediation Work Plan ("Work Plan"). The Certificate is attached to this Covenant as Exhibit 1 and the Work Plan as Exhibit 2. The **APPLICANT** has completed the Work Plan to address the release of the hazardous substances or petroleum listed in Exhibit 3 at the **SITE NAME** ("Site") located at **STREET ADDRESS, CITY**, Indiana. Site characterization information is attached as Exhibit 4, and a site map and legal description are attached as Exhibit 5.

Pursuant to Indiana Code § 13-25-5, the Governor of the State of Indiana now covenants not to sue **APPLICANT** for any liability, including future liability, or for any claim, resulting from or based upon the release or threatened release of contaminants listed in Exhibit 3 that were the subject of the Work Plan. The Covenant shall bar suit against **APPLICANT**, and any other person who receives the Certificate of Completion through legal transfer or who acquires the subject property to which the Certificate applies ("successors in title"), from all public and private claims arising under Title 13 of the Indiana Code or rules adopted thereunder in connection with the release or threatened release of a hazardous substance or petroleum that was the subject of the approved Work Plan.

This Covenant Not To Sue shall be construed as a Covenant running with the land, but shall not apply to the predecessors in title of **APPLICANT**.

RESERVATIONS

1. Pursuant to Indiana Code § 13-25-5-18(c), the Covenant does not extend to any public or private claim for liability, or future liability, arising under Title 13 of the Indiana Code or any rules adopted thereunder, resulting from or based upon a condition or extent of a condition that:

- A) was present on the property on which a completed Voluntary Remediation Work Plan took place; and
- B) was not known to the Commissioner of the Indiana Department of Environmental Management at the time the Certificate of Completion was issued.

For purpose of this paragraph, the Commissioner's knowledge at the Site is limited to the information IDEM received during the execution of the Work Plan and the information contained in the site investigation report(s) and the Work Plan and its attachments as provided to IDEM.

2. Pursuant to Indiana Code § 13-25-5-1, a person that performs an action under an

approved Remediation Work Plan is performing that action to assure compliance with the voluntary remediation of hazardous substances and petroleum. This section does not affect a person's legal obligations set forth in 42 U.S.C. § 6901, *et seq.* regardless of a person's participation in this chapter.

3. Pursuant to Indiana Code § 1-25-5-18(d), this Covenant does not preclude the federal government from pursuing **APPLICANT** for claims based on federal law.

4. This Covenant does not preclude the State of Indiana from taking any unilateral action at the Site, under any existing or future statutory authority, to protect human health and the environment, provided however, in no event shall the State have a right of recovery against **APPLICANT**, or its successors in title, to the extent that such right of recovery arises under Title 13 of the Indiana Code, or rules adopted thereunder, and relates to matters covered by the Work Plan.

5. This Covenant does not preclude the State Natural Resource Trustees ("Trustees") from pursuing **APPLICANT**, or its successors in title, for natural resource damages resulting from the release or threatened release of contaminants listed in Exhibit 3 that were addressed by the completed Work Plan.

6. This Covenant does not preclude the State of Indiana from enforcing, under Indiana Code § 13-14-2-6(5), a restrictive covenant implemented under the Work Plan.

7. This Covenant does not preclude the State of Indiana from suing **APPLICANT** for the money they agreed to pay the Indiana Department of Environmental Management under the Voluntary Remediation Agreement.

WHEREFORE, the Governor of the State of Indiana issues this Covenant to **APPLICANT**, with all aforementioned privileges, responsibilities, conditions and reservations, this _____ of _____, 20____.

Frank O'Bannon, Governor, State of Indiana

APPROVED FOR LEGALITY AND FORM

Steve Carter

Attorney General, State of Indiana

By: _____

Gregory F. Zoeller

Chief Counsel, Advisory Services